Postal Regulatory Commission
Submitted 2/8/2023 2:18:20 PM
Filing ID: 124426
Accepted 2/8/2023

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Periodic Reporting
(NPPC et al. Proposal One)

Docket No. RM2023-3

# PUBLIC REPRESENTATIVE COMMENTS

(February 8, 2023)

## I. INTRODUCTION

The Public Representative hereby provides comments in response to Commission Order No. 6430.[1] In that order the Commission invites comments from interested persons, including the undersigned Public Representative, that address a Petition initiated by the National Postal Policy Council, the Alliance of Nonprofit Mailers, the American Catalog Mailers Association, the Association for Postal Commerce, the Major Mailers Association, the National Association of Presort Mailers, and N/MA – The News Media Alliance (Mailers) for a change in analytical principles relating to periodic reports.[2]

## II. BACKGROUND

### A. Mailers' Motion and Petition

On December 19, 2022 the Mailers filed a motion for reconsideration of Order No. 6363[3], or in the alternative, requested the Commission accept a petition to initiate a proceeding to change the accepted analytical principles for the regulatory treatment of

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1 Order Denying Request for Reconsideration and Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (NPPC et al. Proposal One), January 25, 2023 (Order No. 6430).

2 Motion for Reconsideration or, in the Alternative, Petition to Initiate a Proceeding Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, December 19, 2022 (Petition).

3 Docket No. RM2023-1, Order Granting Petition, In Part, for Reconsideration, December 9, 2022 (Order No. 6363).

FY 2022 retiree health benefit (RHB) normal costs. Mailers' Motion and Petition at 1. Mailers request that the Commission consider three separate requests:

1. Reconsider, pursuant to 39 C.F.R. §3010.165, on both procedural and substantive grounds the decision in Order No. 6363 that the Postal Service's proposed exclusion of recurring retiree health benefits (RHB) normal costs from the annual Cost and Revenue Analysis report (CRA) is not a change in analytical principle;

2. Reconsider the related decision to impose the burden on mailers to petition the Commission for a change in analytical treatment, when it is the Postal Service, not mailers, that is proposing the change to exclude RHB normal costs for regulatory costing purposes, as initially proposed in its letter to the Commission dated August 12, 2022; and

3. Alternatively, initiate a rulemaking to reapply the analytical principle applied in the FY 2021 Annual Compliance Review for RHB normal costs, to the extent that the Commission now interprets the analytical principle to state that there is no RHB normal cost incurrence in FY 2022 because there is no payment due in FY 2022.

*Id*. at 2.

The first two requests were addressed in Commission in Order No. 6430. Ultimately the Commission denied the Mailers request for reconsideration of their findings in Order No. 6363 in which the Commission determined that accepted analytical principles do not require the Postal Service to attribute costs that have not been incurred. Order No. 6363 at 10. The Commission also found that because it was the Mailers who advocated for a change in accepted analytical principles relating to RHB normal costs, that the Mailers may petition for the change pursuant to 39 CFR 3050. Order No. 6430 at 27. The third request pertaining to a change in accepted analytical principles that would require the Postal Service to attribute RHB normal costs despite those costs not being accrued on the Postal Service's National Trial Balance, is the subject of NPPC et al. Proposal One.

The Mailers argue in their motion that treating RHB normal costs "as accrued in the year that they are earned" would "improve the quality, accuracy, and completeness of the data" when compared to the Commission's findings in Order No. 6363. Mailers Motion and Petition at 16. They state that attributing those costs in the year they are earned in "consistent with economic accounting". *Id*. Additionally, Mailers state that excluding the RHB normal costs would result in understated cost avoidance estimates resulting in inaccurate compliance findings with regards to workshare discounts and ultimately resulting in rate adjustments that may "frustrate rather than further the Commission's stated goals of pricing and operational efficiency". *Id*. at 16-17.

The Mailers state the NPPC et al. Proposal One "is fully consistent with the legal standard that attributable costs are 'the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships.'" *Id* at 17. (Quoting 39 U.S.C. 3622(c)(2)). They assert that "earned RHB costs plainly satisfy that standard and attributing them improves the quality of postal accounting by making it more consistent with statutory requirements." *Id*. Additionally, they argue that excluding the RHB normal costs would "erode the accuracy of the Commission's compliance findings with respect to whether competitive products were operating in full compliance with the causation-based statutory costing requirements". *Id*.

The Mailers assert that correcting these costs in future years would not mitigate distortions to workshare discounts. According to the Mailers "under workshare rules, current discounts are used as inputs in establishing subsequent discounts" and that "distortions in current discounts, even if temporary, would thus result in future distortions". *Id*. The Mailers state that according to the Postal Service's FY 2022 10-K, retiree health benefit normal costs were $4.4 billion in FY 2022, and that "proper treatment of these costs would increase attributable costs by approximately $2.6 billion". *Id*.

B. Responses to the Mailers' Motion and Petition

On January 4, 2023 the Package Shippers Association (PSA) filed its response to the Mailers' Motion and Petition. PSA agrees with the Mailers position that the FY 2022 RHB normal costs should be accrued and attributed to products using the same labor distribution. PSA notes that while the PSRA[4] changed the timing of the payments it did not address cost accrual principles or causality-based attribution. PSA Response at 1. PSA references Postal Service comments in Docket No. RM2007-1 which they argue supports accruing and attributing RHB normal costs regardless of the timing of payment. *Id*. at 2. They contend that accruing and attributing RHB normal costs is the

[4] Postal Service Reform Act of 2022, Pub. L. 117-108, 136 Stat. 1127 (2022).

only approach that satisfies requirements of causation-based costing requirements. *Id*. at 3.

In its response to the Mailers' Motion and Request, the Postal Service opposes both the request for reconsideration of Order No. 6363 and the alternative request to adopt NPPC et al. Proposal One. [5] The Postal Service contends that NPPC et al. Proposal One should be rejected on the merits. The Postal Service objects to the Mailers' argument that the PSRA should not have any effect on FY 2022 normal cost accruals and attribution and argues that the Mailers' proposed approach runs afoul of Congressional intent. *Id*. at 5.

Specifically, the Postal Service argues that "the PSRA changes in fact bear directly on how RHB costs must be treated" because the PSRA reversed key PAEA provisions relating to retiree health benefits. *Id*. at 7. The Postal Service explains that the PAEA required prefunding of future retiree health benefit normal costs and that the PSRA eliminated this requirement, switching back to the pre-PAEA pay-as-you-go system to paying for these costs. *Id*. at 7-8. The Postal Service cites to the House Report accompanying the PSRA as affirming this. *Id*. at 8-9. The Postal Service emphasizes that "a cost at its essence consists of an amount someone is required to pay" and argues that the Commission should continue to recognize the limitations of a strictly "economic" approach to costing when "disparities between theoretical 'economic' costs and booked 'accounting' costs" exist." *Id*. at 9.

The Postal Service specifically takes issue with the Mailers' assertion that "costs that are incurred annually in the normal course of operation do not flip from accrued to non-accrued and back . . . depending on whether OPM deems an invoice necessary." *Id*. at 10 (citing Mailers' Motion and Petition at 13). The Postal Service argues that the format in which OPM conveys payment information is not necessarily dispositive, but "'economic' costs can indeed flip back and forth from accrued to non-accrued depending on whether Congress through legislation deems payment to be required or not (which, in turn, is what will determine whether OPM issues an invoice or not)." *Id*.

[5] Docket Nos. RM2023-1 and RM2023-3, Response of the United States Postal Service to Mailers' Motion for Reconsideration and Petition, January 4, 2023 (Postal Service Response).

The Postal Service further outlines the history of legislative changes to various payment requirements. *Id*. at 10-11. The Postal Service argues that all of these changes “directly affected cost accruals by virtue of changing the nature or scope of the obligations that Congress was imposing on the Postal Service, and the PSRA is no exception”. *Id*. at 11. The Postal Service contends that NPPC et al. Proposal One does not justify a change in the analytical principles to require that costs that are not incurred be included in either the financial or regulatory reporting. *Id*.

The Postal Service also argues that NPPC et al. Proposal One fails to explain how the change in accepted analytical principles would be implemented and that “Mailers fail to articulate exactly how their Proposal One would operate in any way that could possibly meet rational regulatory guidelines.” *Id*. at 12. The Postal Service states that while the result the Mailers hope to achieve is clear “how they would propose to get there is distinctly unclear” and “to the extent that a potential pathway can be surmised, it has additional unacceptable shortcomings.” *Id*.

The Postal Service provides a step-by-step description for how RHB normal costs were accrued and attributed in FY 2021. The process begins with the receipt of an OPM invoice that lists the amount payable for FY 2021 RHB normal costs ($4.2 billion), that amount is reported in National Trial Balance Account 51204.000 and for regulatory purposes is also reported in Component 208 and Component 202 in Cost Segment 18. Costs in Component 202 are partially attributed to products. *Id*. at 13. The Postal Service states that NPPC et al. Proposal One seeks to attribute costs in Component 202, but it is unclear how the Mailers propose to achieve this without an invoice from OPM. *Id*. at 13-14. The Postal Service explains its concerns with recording RHB normal costs at the Trial Balance level, given that it would be inconsistent with Generally Accepted Accounting Principles (GAAP) requirements. *Id*. at 14-15.

The Postal Service suggests that the Mailers preferred approach would be to “implement a regulatory adjustment during the reallocation process, not an accounting adjustment within the general ledger” and indicate they seek to use the accounting and regulatory process used prior to FY 2017. The Postal Service addresses the Mailers reference to negative adjustments made in FY 2009 and FY 2011. *Id*. at 19-20. They argue that the adjustment in those years "were transitory adjustments to or deferrals of payment amounts previously specified by Congress". *Id*. The Postal Service argues that making the same adjustment for FY 2022 would result in attributable cost of RHB normal costs exceeding the accrued accounting costs unlike in FY 2009 and FY 2011 when the attributable RHB normal costs did not exceed the total accrued costs. *Id*. at 21. The Postal Service concludes that attributing costs that were not accrued for accounting purposes "would open the door for the complete untethering of regulatory costs from booked accounting costs." *Id*. at 21.

C. Mailers Reply Comments

On January 11, 2023, the Mailers filed a motion for leave to file reply comments and concurrently submitted reply comments.[6] In the reply comments, the Mailers reemphasize that the PSRA did not change the treatment of retiree health benefit costs, and that in their view, the PSRA "addressed solely the timing of payment, not the regulatory handling of the cost." *Id*. at 2. The Mailers further contend that the PSRA did not change the legal standard governing cost attribution nor "direct the Postal Service to abandon systemwide accrual costing." *Id*. at 2-3.

The Mailers assert that failing to attribute retiree health benefit normal costs will have significant negative consequences as demonstrated in the FY 2022 ACR, where "the omission of more than $2 billion of attributable costs makes material changes to workshare discount passthroughs compared to if those costs were included." *Id*. at 3. The Mailers point to several workshare discounts being reported as having passthroughs exceeding 100 percent, despite those passthroughs previously being set at 100 percent in the most recent rate adjustment proceeding, which the Mailers assert "is very largely due to the omission of $2.4 billion in attributable costs." *Id*. at 4-5. The Mailers note that workshare discounts with passthroughs below 85 percent were also affected as they "now appear to have larger passthroughs – again almost entirely due to the omission of more than $2 billion in attributable retiree health benefit normal costs."

[6] Docket Nos. RM2023-1 and RM2023-3, Motion for Leave to File Reply Comments, January 11, 2023 (Motion for Reply Comments); Docket Nos. RM2023-1 and RM2023-3, Reply Comments Regarding the Appropriate Analytical Principle for Retiree Health Benefit Normal Costs, January 11, 2023 (Mailers' Reply Comments).

*Id*. at 5. The Mailers assert that this will result in inaccurate compliance findings for workshare discounts and may have negative effects on the Commission's goal of pricing and operational efficiency and will impede efforts to move workshare discounts with low passthroughs to more efficient levels. *Id*.

D. Commission Findings

In the first part of its analysis in Order No. 6430 the Commission identifies and explains its position on the first part of the Mailers Motion, whether or not the Commission should reconsider its findings in Order No. 6363 in which the Commission found that the Postal Service is not required to include costs not incurred in its periodic reports to the Commission. Order No. 6430 at 15-16. The Commission ultimately denies the Motion for Reconsideration, reiterating their findings in Order No. 6363 that the accepted analytical principles require only accrued RHB normal costs to be attributed. *Id*. at 15-16. Furthermore, the Commission explains that the adoption of this principle to attribute RHB normal costs "did not supersede a separate longstanding analytical principle regarding the scope of postal costs and resulting limits on the pool of costs that may be attributable to products." *Id*. at 17-18. This principle relates to the concepts of economic costs and accounting costs. Between FY 2007 and FY 2016, accounting costs consisted of employer premiums and the prefunding payments. *Id*. at 18. Between FY 2017 and FY 2021, the accounting costs consisted of the amortization payments and RHB normal costs. *Id*. According to the Commission, "economic costs include costs for benefits as benefits are earned regardless of whether an actual payment is due for the costs". *Id*. They further state that "the longstanding principle limits the extent to which economic costs can be attributed to the total amount of booked costs". *Id*. at 19.

The Commission addresses the Mailers reference to Postal Service comments in Docket RM2007-1, which the Mailers interpret to mean that RHB normal costs are considered economic costs that would be attributed as they were earned (not necessarily paid). The Commission contends that the Mailers fall short of including the approach adopted by both the Commission and the Postal Service that includes a "critical limiting principle that the extent to which these costs can be attributed is capped at the total accounting costs." *Id*. at 20. Furthermore, the Commission asserts that according to 39 U.S.C. 3631(b), attributable costs “are statutorily defined as ‘the direct and indirect postal costs attributable to… products through reliably identified causal relationships.’” And that while economic cost analysis is relevant, that “because attributable costs are a subset of total postal costs, they cannot exceed the corresponding total accounting costs, which define and measure the accrued costs of the Postal Service each fiscal year. *Id*. at 20-21.

The Commission finds that the total FY 2022 RHB normal costs were accrued in accordance with the PAEA and then retroactively reversed according to the passage of the PSRA. *Id.* at 23. With the ceiling for RHB normal cost set at zero, the economic cost (attributable cost) for RHB normal costs is also zero. *Id*.

The second part of Order No. 6430 initiates a rulemaking to consider a change in accepted analytical principles. The Commission references the argument posed by Mailers that accruing and attributing RHB normal costs each year would improve the quality, accuracy, and completeness of the data in the Postal Service’s periodic reports when compared to current analytical principles. *Id.* at 31 (citing Mailers Motion and Petition at 16). Furthermore, the Commission recognizes the Mailer’s contention that the proposed cost attribution is a component of the economic cost of postal work. *Id*. The Commission notes the Mailers claim that NPPC et al. Proposal One is preferable because excluding RHB normal costs would result in inaccurate cost avoidance estimates, which would result in inaccurate compliance determinations with respect to workshare discounts. *Id*. The Commission recognizes the Mailers statement that NPPC et al. Proposal One “is fully consistent with the legal standard that attributable costs are ‘the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships.’” *Id*. (quoting 39 U.S.C. 3622(c)(2)). The Commission also references the Mailers statement that according to the Postal Service FY 2022 10-K report, RHB normal costs were $4.4 billion, and that the proper treatment of those costs would yield an approximately $2.6 billion increase in attributable costs. *Id*.

## III. Comments

The Public Representative has reviewed Mailers Motion and Petition and responses thereto, including Order No. 6430. First, the Mailers request the Commission and Postal Service "to the extent the Order No. 6363 interprets the principle as not requiring attribution of accrued RHB normal costs when the Postal Service is under no immediate obligation to pay, the mailers hereby would petition, pursuant to 39 C.F.R. §3050.11, to change that principle." Mailers Motion and Petition at 16. To support this request the Mailers argue that accruing the RHB normal costs would improve the quality, accuracy, and completeness of the data in the Postal Service's periodic reports when compared to the approach urged in Order No. 6363. *Id*. Furthermore, according to the Mailers, accruing and attributing RHB normal costs in the year in which they were earned is "consistent with economic cost accounting". *Id*.

The Mailers suggest that the passage of the PSRA does not eliminate the "economic" RHB normal costs which have been "accrued" and attributed consistently since FY 2008. Mailers Motion and Petition at 15. However, this ignores the underlying relationship between RHB normal costs and total RHB costs required to be paid by the Postal Service in those years. Between FY 2007 and FY 2016, the RHB normal cost was not an accrued accounting cost but rather an attributable (current) portion of total RHB prefunding costs, an accrued cost in the National Trial Balance. In years FY 2017 to FY 2021, the current portion of RHB normal cost was accrued and attributed in accordance with changes outlined in the PAEA. [7] The Mailers argument seems to miss the fact that the under the PAEA ratemaking system (FY 2007 to FY 2021) the Postal Service was required to accrue RHB costs and the PSRA eliminated that requirement for FY 2022.

In past filings (and even prior to the PAEA) the Postal Service and the Commission have considered "economic costs" as "functional costs", specifically referenced in Order No. 203, calculating economic (functional) costs for the CRA "takes dollars from hundreds of subaccounts in the Postal Service's Books of Account and

[7] See Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3198 (2006).

assigns them to one of hundreds of “functional” cost components. Costs in the various functional components are analyzed to see how they vary with mail volume.”[8] Further the cost estimates “generated by each subclass of mail are derived from the intricate rules that it uses to convert its accounting costs to functional costs, apply variability percentages to functional costs, and distribute the variable portion to subclasses”. *Id*. It seems apparent that the Mailers do not seek a change in the Postal Service accounting practices to accrue RHB normal costs in the National Trial Balance. Therefore, it can be assumed the Mailers seek to include these economic (attributable) costs without any basis in the general ledger. However, it is unclear how the Mailers intend to implement this change, nor do they address the broader effects it could have on periodic reporting.

Costs accrued in the Postal Service’s National Trial Balance are the foundation of its regulatory cost distribution calculations in the ACR. This is an important control that allows the Commission to trace costs distributed to products back to their original source; the accrued costs recorded in the National Trial Balance. It is critical to both the broader financial analysis of Postal Service operations and for more granular analyses at the class and product levels. The National Trial Balance, Statement of Revenue and Expenses and the Reallocated Trial Balance are integral parts of a complex process that reallocates accrued Postal Service costs to hundreds of mail products. The ability to trace back and reconcile that cost data to accrued (accounting) costs allows the Commission to ensure the data’s quality, accuracy and completeness. It is unclear how disconnecting attributable costs from accrued costs would improve the quality, accuracy, or completeness of periodic reporting as the Mailers suggest.

The Mailers contend that according to 39 U.S.C. §3622(c)(2) and 39 U.S.C.§3631(b), “accruing RHB normal costs is fully consistent with the legal standard that attributable costs are ‘the direct and indirect postal costs attributable to each class or type of mail service through reliably identified causal relationships.’” *Id*. at 17. For a product or class to bear its direct and indirect costs, the Postal Service must first calculate the total cost, attributable cost a portion of total accrued cost. The Postal

[8] See Docket No. RM2003-3, Final Rule Docket No. RM2003-3, Final Rule on Periodic Reporting Requirement, November 3, 2003, at 21-22 (Order No. 1386).

Service must have a basis for calculating its direct and indirect costs, using the National Trial Balance (general ledger). Nothing within the statute cited by the Mailers would suggest that attributable costs be calculated using costs that the Postal Service does not first accrue as accounting costs, simply that the postal costs be attributed properly to mail classes and products.

The Mailers also express concern about the negative effects of not attributing RHB normal costs on workshare discounts. They state that removing the normal costs will distort current discounts and future distortions given that current discounts are used as inputs in establishing subsequent discounts. Mailers Motion and Petition at 17. In their reply comments the Mailers identify several workshare discount passthroughs that exceed 100 percent "despite being set equal to 100 percent only three months ago."[9] They list several examples and conclude that each of the noncompliant discounts listed is "100 percent solely due to reduced estimates of avoided costs, which in turn is very largely due to the omission of $2.4 billion in attributable costs." *Id*. For example, the Mailers mention six Marketing Mail Parcel categories with passthroughs exceeding 100 percent and reference the Postal Service's remarks that the noncompliant passthroughs are directly the result of a change in cost avoidance between ACR 2021 and ACR 2022. *Id*. at 4-5. However, the Postal Service explains elsewhere in the ACR report that "mail processing cost avoidance models are calibrated to the IOCS/CRA costs, which fluctuate for a multitude of reasons. As such, the magnitude and direction of changes in costs varies from product to product and from year to year, sometimes widely (e.g., the costs for small-volume products are particularly subject to change)."[10] For instance, FY 2022 Marketing Parcels unit delivery cost, which is used in its avoided cost calculation, is $2.472 less than FY 2021.[11] Furthermore, the Commission has not yet filed its FY 2022 Annual Compliance Determination (ACD) report which should identify and examine all workshare discounts with passthroughs exceeding 100 percent. In the FY

[9] Mailers' Reply Comments at 4. Referencing Docket No. ACR2022, United States Postal Service FY 2022 Annual Compliance Report, December 29, 2022.

[10] See Docket No. ACR2022, United States Postal Service FY 2022 Annual Compliance Report, December 29, 2022 at 22.

[11] See Docket No. ACR2022, Library Reference USPS-FY22-19, Excel file "UDCModel22.xlsx.", tab "1.Table 1", cell C68; Docket No. ACR2021, Library Reference USPS-FY21-19, Excel file "UDCModel21.xlsx.", tab "1.Table 1", cell C68. The difference between FY 2021 unit delivery cost of $43.147 and FY 2022 unit delivery cost of $40.675.

2021 ACD report, the Commission identified six workshare discounts with passthroughs exceeding 100 percent and ordered that the Postal Service bring those discounts into compliance with 39 C.F.R. § 3030.283 in the next rate adjustment proceeding.[12]

Finally, the Mailers note that RHB normal costs reported in the FY 2022 Postal Service Form 10-K report totaled $4.4 billion and as demonstrated by the Mailers in Table 2 of their request, “proper treatment of these costs would increase costs by approximately $2.6 billion” Mailers’ Motion and Petition at 17-18. However, the reason the Form 10-K reports RHB normal costs is solely because it is required by 39 U.S.C. 3654(b)(1)(C). The normal costs ($4.4 billion) reported are not accrued in the National Trial Balance, nor do they impact the Postal Service’s balance sheet.

For the reasons explained above the Public Representative recommends the Commission deny NPPC et al. Proposal One and apply the same accepted analytical principles used in the FY 2021 ACR to the treatment of RHB normal costs. The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

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[12] Docket No. ACR2022; Annual Compliance Determination Fiscal Year 2021, March 29, 2022, at 20.